

M e m o r a n d u m**432.0063.840**

To: G. Jung
Oakland District Office – CH
Compliance Section

Date: September 7, 1993

From: Sukhwinder K. Dhanda, Tax Counsel
Legal Division – MIC:82

Subject: X-----

This memorandum is in response to your inquiry as to whether the "LifeHelp, Service Request Card" constitutes an exempt sales message or whether it is taxable as an order form.

The LifeHelp circular which you attached to your memo is advertising a kit apparently available free of charge to those who request it. The bottom half is an order/request form.

Revenue and Taxation Code section 6379.5 provides an exemption for sales of printed sales messages printed to the special order of the purchaser and mailed or delivered by the seller, the seller's agent, or a mailing house acting as an agent for the purchaser, through the United States Postal Service or by other common carrier to any other person at no cost to that person who becomes the owner thereof. The relevant terms of the exemption are explained in Regulation 1541.5.

Subdivision (a) (1) of Regulation 1541.5 specifically provides that order forms are not printed sales messages unless they meet the principal purpose of advertising or promoting goods or services. The regulation provides that an order form is considered part of the printed sales message when it is stapled, glued, or otherwise physically affixed to the printed sales message in such a manner that it becomes a component or integral part of the printed sales message and is sold together with that message. If it is not physically attached to the printed sales message, an order form is not a printed sales message and its sale is subject to sales or use tax. (Reg. 1541. 5 (b) (8)).

Because of the promotional information contained in the circular, its principal purpose is to advertise/promote the LifeHelp kits. We therefore conclude that the circular qualifies as a printed sales message even though it also contains an order form.

The sale of the circular is exempt as a printed sales message if it is printed to the special order of the purchaser X----- and is delivered through mail or common carrier (a common carrier has to involved in some stage of the delivery).

SKD:plh